Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte RICHARD M. ROCCA and IRVING JACOBSON

Appeal No. 2000-0234
Application No. 08/730,236

ON BRIEF

Before FLEMING, LALL, and BARRY, *Administrative Patent Judges*.
BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

The examiner rejected claims 6-20. The appellants appeal therefrom under 35 U.S.C. § 134(a). We reverse.

BACKGROUND

The invention at issue in this appeal relates to operating a motor vehicle during inclement weather. The turning on of a vehicle's headlights during inclement weather is a safety measure. In some states, the law requires that

when the windshield wipers of a vehicle are turned on (e.g., during a rainfall), the headlights must also be turned on. Operation of the vehicle's exterior lights not only enhances visibility by the vehicle's operator but also enhances visibility of the vehicle to third parties.

The invention strobes or brightens the various lights of a vehicle depending on the weather conditions. The strobing or brightening is triggered when a humidity sensor detects moisture. Upon such detection, if the vehicle's left or right turn directional signal is activated, the left or right headlight, respectively, will flash at microsecond intervals to create a strobe effect. In addition, the voltage to the parking, directional, warning, license plate, and brake lights will be increased, thereby brightening these lights.

Claim 6, which is representative for present purposes, follows:

> 6. In a vehicle having a turn directional signal and a mechanism for activating the signal, a strobe light, and apparatus for activating the strobe light when the turn directional signal is activated.

(Reply Br. at 9.)

The prior art applied by the examiner in rejecting the claims follows:

Nallinger	3,316,441	Apr. 25, 1967
Elmer	3,553,644	Jan. 5, 1971
Ayres et al. (“Ayres”)	2,655,642	Oct. 13, 1953
Freeman et al. (“Freeman”)	5,231,373	July 27, 1993
Eckhardt	3,631,391	Dec. 28, 1971.

Claims 6 and 7 stand rejected under 35 U.S.C. § 103(a) as obvious over Nallinger in view of Elmer further in view of Ayres. Claims 8-14 and 17-20 stand rejected under § 103(a) as obvious over Nallinger in view of Elmer further in view of Ayres even further in view of Freeman. Claims 15 and 16 stand rejected under § 103(a) as obvious over Nallinger in view of Elmer further in view of Ayres even further in view of Freeman also in view of Eckhardt.

OPINION

After considering the record, we are persuaded that the examiner erred in rejecting claims 6-20. Accordingly, we reverse.

Rather than reiterate the positions of the examiner or appellants *in toto*, we address the main point of contention therebetween. Admitting that Nallinger does not "stat[e] that a strobe light is activated by the turn signals," (Examiner's Answer at 4), the examiner asserts, "Elmer teaches that it is desirable under low visibility conditions to strobe, or flash a light on a vehicle, such as during fog, order to enhance the visibility of a vehicle (col. 1, lines 19-26)." (*Id.* at 5.) The appellants argue, "Elmer just teaches flashing a light at regular second speeds, as is evidenced by his use of an existing flasher 36 [co1.2, line 59]." (Reply Br. at 6.)

In deciding obviousness, "[a]nalysis begins with a key legal question -- *what* is the invention *claimed*?" *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1567, 1 USPQ2d

1593, 1597 (Fed. Cir. 1987). "Claims are not interpreted in a vacuum, but are part of and are read in light of the specification." *Slimfold Mfg. Co. v. Kinkead Indus., Inc.*, 810 F.2d 1113, 1116, 1 USPQ2d 1563, 1566 (Fed. Cir. 1987)(citing *Hybritech Inc. v. Monoclonal Anti-bodies, Inc.*, 802 F.2d 1367, 1385, 231 USPQ 81, 94-95 (Fed. Cir. 1986); *In re Mattison*, 509 F.2d 563, 565, 184 USPQ 484, 486 (CCPA 1975)).

Here, independent claim 1 specifies in pertinent part the following limitations: "apparatus for activating the strobe light. . . ." Similarly, independent claim 20 specifies in pertinent part the following limitations: "means for strobing the headlight. . . ." The specification describes the strobing as "caus[ing] the [sic] either the high or low headlight beam or strobe to flash at microsecond intervals to create a strobe effect." (Spec. at 9.) Reading the independent claims in light of the specification, the limitations require flashing a light at microsecond intervals to create a strobe effect.

Having determined what subject matter is being claimed, the next inquiry is whether the subject matter is obvious. "In rejecting claims under 35 U.S.C. Section 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness." *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993)(citing *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992)). "'A *prima facie* case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art.'" *In re Bell*, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993) (quoting *In re Rinehart*, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976)).

Here, although Elmer discloses a "backup light . . . being flashed," col. 1, ll. 22-25, the examiner does not allege, let alone show, that the flashing is performed at microsecond intervals to create a strobe effect. To the contrary, we agree with the appellants that "Elmer just teaches flashing a light at regular second speeds, as is

evidenced by his use of an existing flasher 36 [co1.2, line 59]." (Reply Br. at 6.) We also agree that Ayres "flashes headlights only at regular second speeds. Thus in col. 4, lines 42 and 43, he indicates that he employs a thermal flasher switch 44. Thermal flasher switches are notoriously slow devices (heat travelling [sic] slowly) and operate at regular second speeds." (*Id.*)

Relying on Freeman merely to "teach[] desirability in a vehicle signaling system of increasing intensity of signal light SL if fog or rain are detected by fog detector 28 or precipitation detector 30," (Examiner's Answer at 6), and Eckhardt to "teach[] displaying light condition of exterior vehicle used in foggy conditions at a dashboard," (*id.*), the examiner fails to allege, let alone show, that the references cure the defect of the primary, secondary, and tertiary references. Therefore, we reverse the rejection of independent claims 6 and 20 and of claims 7-19, which depend from claim 6.

CONCLUSION

In summary, the rejection of claims 6-20 under § 103(a) is reversed.

REVERSED

MICHAEL R. FLEMING Administrative Patent Judge	)	
PARSHOTAM S. LALL Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
LANCE LEONARD BARRY Administrative Patent Judge	)	

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Once signed, forward to Team 3 for mailing.

APPEAL NO. 2000-0234 - JUDGE BARRY
APPLICATION NO. 08/730236

APJ BARRY - **2 copies**

APJ FLEMING

APJ LALL

Prepared By: APJ BARRY

DRAFT SUBMITTED: 13 Nov 02

FINAL TYPED:

Team 3:

I typed all of this opinion.

Please proofread spelling, cites, and quotes. Mark your proposed changes on the opinion, but **do NOT change matters of form or style. I will include the diskette with the signed copy so that you can make all changes before mailing.**

For any additional reference provided, please prepare PTO 892 and include copy of references

Thanks,
Judge Barry